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April 8, 2008

VIA EMAIL & U.S. MAIL

David King, Esq.
Presiding Officer, Shipyard Sediment Site Proceedings
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

RE: Attached Request by BAE Systems San Diego Ship Repair, Inc.

Dear Mr. King:

The attached documents include a formal request by BAE Systems San Diego Ship Repair Inc. ("BAE Systems") that the San Diego Unified Port District ("Port District") and the City of San Diego ("City") be named as "dischargers"/additional responsible parties in the Shipyard Sediment Site proceeding, plus exhibits to that request and cover sheets and other "index" documents specified in your Notice Letter dated April 4, 2008. This BAE Systems request is made pursuant to Section 6 of the January 30, 2006 First Amended Order of Proceedings, as discussed on page 2 of your April 4, 2008 Notice.

As stipulated in your April 4, 2008 Notice, I confirm that BAE Systems' proposal has previously been provided to representatives of both the Port District and the City.

BAE Systems has made a good faith effort to comply with the various procedural requirements summarized on page 2 of your April 4, 2008 Notice relating to electronic index entries, specific formats for comments, etc., although we question whether they are intended to apply to requests for naming of additional responsible parties. If we have omitted any required documents or information, we will gladly supply the missing items upon request.

Respectfully submitted,

MCKENNA LONG & ALDRIDGE LLP

By: 

Christian Volz
Attorneys for BAE Systems
San Diego Ship Repair Inc.

California Regional Water Quality Control Board
San Diego Region

Re: Tentative Cleanup and Abatement Order No. R9-2005-0126

Submitted by:

**Christian Volz, Esq.
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Representing:

BAE Systems San Diego Ship Repair Inc.

April 8, 2008

APPENDIX B
January 30, 2006

| Date of Document | Type of Document | Title/Description of Document | Submitted By | Submitted To | Total Number of Pages | Titles of Attachments |
|------------------|------------------|--|--|------------------------------|---|-----------------------|
| April 8, 2008 | Letter | Legal argument and supporting exhibits | Counsel for BAE Systems San Diego Ship Repair Inc. | Presiding Officer David King | 47, including cover sheets and exhibits | Exhibits 1 - 12 |
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Tentative Cleanup & Abatement Order Comment Information

| | |
|---|---|
| Document Name | Tentative CAO No. R9-2005-0126 |
| Document Date | April 8, 2008 |
| Finding or Directive Number | Not applicable; the comments address the absence of certain findings. |
| Page, Paragraph, and Sentence Number | Not applicable. |
| Concise Summary of Issue | The attached comment letter requests that the San Diego Unified Port District and the City of San Diego be named as "dischargers" with respect to any alleged contamination attributable to operations prior to 1979 at the current BAE Systems San Diego Ship Repair Inc. leasehold located at 2205 East Belt Street, Foot of Sampson Street, San Diego. |

**Draft Technical Report for Tentative Cleanup & Abatement Order
Comment Information**

| | |
|--------------------------------------|---|
| Document Name | Draft Technical Report for Tentative CAO No. R9-2005-0126 |
| Document Date | April 8, 2008 |
| Section Number | Section 1 and Section 5 |
| Page, Paragraph, and Sentence Number | 1 – 9 to 1 – 12, and 5 – 1 to 5 – 9. |
| Concise Summary of Issue | The attached comment letter requests that the San Diego Unified Port District and the City of San Diego be named as “dischargers” with respect to any alleged contamination attributable to operations prior to 1979 at the BAE Systems San Diego Ship Repair Inc. leasehold. The comment letter addresses discussion of the “secondary” liability of the Port District at pages 1 – 9 to 1 – 12, and the pre-1979 operations at the BAE Systems leasehold, and the current status of named dischargers Marine Construction and Design Company, and Campbell Industries, Inc., at pages 5 – 1 to 5 – 9. |

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VIA EMAIL & U.S. MAIL

David King, Esq.
Presiding Officer, Shipyard Sediment Site Proceedings
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD
9174 Sky Park Court, Suite 100
San Diego, California 92123-4340

RE: Tentative Cleanup and Abatement Order No. R9-2005-0126;
Request That San Diego Unified Port District and City of San Diego
Be Named as Dischargers

Dear Mr. King:

In the “First Amended Order of Proceedings” dated January 30, 2006 defining the schedule and procedures for pre-hearing filings related to Tentative Cleanup and Abatement Order No. R9-2005-0126 (“TCAO”), then-Presiding Officer John Minan ordered, among other things, that “[t]he deadline for the Designated Parties to identify any additional potential responsible parties will be 30 days from the distribution of the Cleanup Team’s Technical Report” *Id.* at 6. For the reasons set forth below, Designated Party BAE Systems San Diego Ship Repair Inc. (“BAE Systems”), formerly Southwest Marine, Inc., respectfully requests that the San Diego Unified Port District (“Port District”) be named as a “discharger” in the above-captioned TCAO based on the Port District’s ownership, from 1962 to the present, of the property located at 2205 East Belt Street, Foot of Sampson Street, in San Diego where BAE Systems currently operates a ship repair, alteration, and overhaul facility (the “BAE leasehold”). In addition, BAE Systems requests that the City of San Diego (“City”), which is already named in the TCAO as a “discharger” with respect to pollutants and contaminants discharged from its municipal separate sewer system into San Diego Bay, also be named as a “discharger” based on the City’s ownership, from approximately 1915 to 1962, of the BAE leasehold.¹

¹ The San Diego Unified Port District did not exist prior to 1962. When it was formed in 1962 following an act of the Legislature, the City transferred the BAE leasehold and various other parcels to the Port District. Between 1915 and 1962, the City leased the BAE leasehold directly to the SDMC entities and had the same power to control their operations as the Port District has had since 1962. The first page of the City’s initial lease to San Diego Marine Construction Company, dated April 5, 1915, is attached hereto as Exhibit 1.

The reasons BAE Systems makes this request are straightforward and well known to the Regional Board. As noted in the Draft Technical Report (“Technical Report”), shipyard operations have been conducted on what is now the BAE leasehold continuously since 1915. Between 1915 and 1979, those operations were conducted by companies unrelated to BAE Systems, specifically San Diego Marine Construction Company, its successor San Diego Marine Construction Corporation, a wholly owned subsidiary of Campbell Industries, Inc., a wholly owned subsidiary of Marine Construction and Design Company (“MARCO”), collectively referred to as the “SDMC entities.” The operations of these SDMC entities generated an assortment of wastes, including “incidents of excessive discharges of pollutants from SDMC to San Diego Bay....” Technical Report at 5-1, 5-9.

BAE Systems (in the person of its predecessor Southwest Marine, Inc.) first commenced operations at the current BAE leasehold in 1979, pursuant to a 39-year lease with the Port District dated September 19, 1979. BAE Systems did not enter the BAE leasehold under an “assignment” of any prior lease with the SDMC entities, nor was BAE Systems related to, or a legal successor of the SDMC entities. By entering into a lease with the Port District, BAE Systems did not in any way accept or inherit responsibility for any alleged contamination already existing on the leased premises itself, or in the nearby harbor and harbor sediments. BAE Systems is responsible only for any contamination caused by its own operations after September 1979.

It is a settled principle of law that an owner and lessor of contaminated property is jointly responsible with its lessees for that contamination, and does not escape such responsibility by selling the property to a new owner or leasing it to a new tenant. The Port District may well have legal or equitable rights to indemnification for the alleged contamination of the BAE leasehold that occurred between 1915 and 1979 against the SDMC entities who leased the property during that time and whose operations caused the contamination, or against the City who owned the property between 1915 and 1962 and leased it to the SDMC entities, but it has no such rights against BAE Systems. As between BAE Systems and the Port District, the responsibility for any contamination caused between 1962 and 1979 at the BAE leasehold legally and equitably belongs to the Port District which owned the property and leased it to the SDMC entities, collected revenues from them, and had the authority to control or limit their polluting activities. For the same reasons, as between BAE Systems and the City of San Diego, the City is responsible for any contamination caused between 1915 and 1962, when the City owned the BAE leasehold and leased it to the SDMC entities, prior to the City’s transfer of title to the Port District in 1962.

**THE REGIONAL BOARD MUST PROPERLY DEFINE AND APPLY
THE CONCEPT OF “SECONDARY RESPONSIBILITY”**

The Technical Report contains an extensive discussion of the issue of the Port District’s potential liability as a “discharger” with respect to the BAE leasehold, the NASSCO leasehold, and certain property leased to San Diego Gas & Electric Company, and concludes that the Port

District meets the criteria to be named as a discharger. Technical Report at 1-9 to 1-12. The Technical Report states, however, that the Port District should be considered only “secondarily” responsible for any contamination created by lessees on the properties owned by the Port District, on the grounds that “[t]here is no need to name the Port of San Diego in the Cleanup and Abatement Order as a ‘discharger’ with primary responsibility for compliance until it becomes clear that the Port’s tenants have failed to comply with the Order.” Technical Report at 1-12. Because “[t]here is no evidence in the record at this time indicating that NASSCO, BAE Systems, San Diego Gas & Electric Company, Marine Construction and Design Company, and Campbell Industries Inc. have insufficient financial resources to clean up the Shipyard Sediment Site ... the Regional Board is not now naming the Port of San Diego as a ‘discharger’ ... but may do so in the future if the Port’s tenants fail to comply with the Order.” Technical Report at 1-12.

This statement of policy and interpretation by the Regional Board is legally defensible *if and only if* the Port District’s “secondary” responsibility is evaluated and determined on a case-by-case, *i.e.*, parcel-by-parcel and lease-by-lease basis. In other words, the crucial question posed, but not answered by the vague discussion in the Technical Report is: “secondary *to what?*” Specifically, and by way of example, BAE Systems agrees that the Port District’s responsibility for any contamination caused by BAE Systems’ operations since 1979 is “secondary” to BAE Systems’ “primary” responsibility for any such contamination. BAE Systems does not seek to have the Port District named as a discharger based on any contamination caused by BAE Systems’ own operations since 1979, and accepts full responsibility to address any such contamination at no cost to the Port District.² Similarly, BAE Systems agrees that the Port District’s responsibility for any contamination caused by operations at the BAE leasehold between 1962 and 1979 (and the City of San Diego’s responsibility for any contamination caused between 1915 and 1962) is “secondary” to the responsibility of the SDMC entities whose operations directly created that contamination.

BAE Systems most definitely does not agree, however, that the Port District’s (and the City’s) potential liability for pre-1979 contamination at the BAE leasehold is “secondary” to *BAE Systems’* potential liability for such pre-1979 contamination. This point was stated previously, but it bears repeating: BAE Systems has no potential liability whatsoever for pre-1979 contamination. As between the Port District (and the City) and BAE Systems, as a matter of law and equity *all* responsibility for any pre-1979 contamination belongs to the Port District and the City, and *none* to BAE Systems, and the burdens and risks of seeking indemnification from pre-1979 tenants likewise belong with the Port District and the City. The language in the Technical Report suggests that the Regional Board has a different view on this fundamental issue and that BAE Systems, the current tenant, should be held responsible for any and all contamination on the BAE leasehold including that created in the 65 years of operations

² By referring to its “own operations,” BAE Systems emphasizes that it reserves the right to seek contribution against other responsible parties, potentially including the Port District and City, for any contamination that migrated to the BAE Leasehold from sources off-site, such as storm water runoff or operations on other properties, including contamination that migrated after 1979.

between 1915 and 1979, a period when the City and the Port District owned the property and could have controlled their tenants' operations on it, and when BAE Systems had no operations on or control over the property. Indeed, the language in the Technical Report suggests an even broader and more outrageous proposition, namely, that the Port District's and the City's liability for contamination at any and all of their leased premises is "secondary" to the liability of *all* of the Port District's current tenants for contamination anywhere in the Shipyard Sediment Site. By this logic, the Port District and the City would not become "primarily" responsible for any contamination anywhere until every single one of the tenants named in the TCAO refuses to perform the required remediation of the entire Shipyard Sediment Site. Thus, for example, the Regional Board would consider San Diego Gas & Electric Company "more responsible" than the Port District and the City for any contamination at the BAE and NASSCO leaseholds, and for any contamination caused by the Navy, and would not name the Port District and the City as "dischargers" unless and until San Diego Gas & Electric Company in addition to BAE Systems, NASSCO and the Navy all refused to comply with the Order.

The Regional Board must apply the concept of "secondary" responsibility fairly and rationally. It is fair and rational, and consistent with legal and equitable principles to consider the Port District's and the City's liability as landowners and lessors to be "secondary" to the liability of their tenants with respect to each tenant's individual leasehold and relevant period of operations. It is unfair, irrational and inconsistent with law and equity to characterize the Port District's and the City's liability as "secondary" to all liabilities of all tenants, where such tenants' operations had no actual causal role in creating contamination on other parcels and/or at other time periods.

THE SDMC ENTITIES WILL NOT ACCEPT RESPONSIBILITY FOR PRE-1979 CONTAMINATION ON THE BAE LEASEHOLD

With respect to the BAE leasehold in particular, then, the only defensible basis for the Regional Board not to name the Port District and the City as dischargers with respect to any contamination created between 1915 and 1979 would be a finding that the SDMC entities, the tenants who conducted operations and may directly have caused contamination during that period, have sufficient financial resources and are otherwise able and willing to be responsible for that contamination. As explained below, the Regional Board cannot possibly make such a finding.

The record of proceedings in this TCAO and its predecessor Investigative Orders is compelling evidence that both MARCO and Campbell Industries, the two SDMC entities that the Regional Board has named as dischargers in the TCAO, are unresponsive and indeed, recalcitrant. In Section 5 of the Technical Report, the Regional Board describes MARCO's and Campbell Industries' complete non-responsiveness to Investigative Order R9-2004-0026 directing MARCO to submit a historical site assessment report documenting its operations at the BAE leasehold between 1914 and 1979. Technical Report at 5-3 to 5-4. MARCO not only refused to submit a report; it submitted a wholly unpersuasive written denial that MARCO or

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Campbell Industries had any records relating to “alleged MARCO and/or Campbell Industries operations within or adjacent to the current Southwest Marine Leasehold from 1914-1979, or any other time. MARCO has no California operations or offices. The Campbell Industries subsidiary terminated all California operations in 1999....” Technical Report at 5-3 to 5-4, quoting a letter dated March 5, 2004 from Mr. H. Allen Fernstrom, General Manager of MARCO. The Regional Board noted that MARCO’s “lack of responsiveness forms part of the basis for the Regional Board’s determination that MARCO should be named as a discharger in the Cleanup and Abatement Order.” Technical Report at 5-4.

Notwithstanding this clear evidence that neither MARCO nor Campbell Industries has any intention to cooperate in this proceeding and their explicit denial that they have any California operations, the Regional Board reviewed certain corporate records, including records at the California Secretary of State’s office, and determined that: (1) “Campbell Industries remains an active California Corporation;” and (2) that “MARCO, through its wholly owned subsidiary Campbell Industries, has not terminated its California operations.” Technical Report at 5-4. The Regional Board apparently relies on the mere existence of these corporate records to conclude that MARCO and Campbell Industries are active and financially solvent entities. Unfortunately, there is no basis for such a conclusion. Although the Technical Report correctly describes the chain of corporate mergers and the records at the Secretary of State’s office, the reality is that both MARCO and Campbell Industries have been liquidated.

BAE Systems conducted its own limited investigation to determine whether MARCO and/or Campbell Industries still actually exist, and if they do, in what condition and with what intentions with regard to their being named as dischargers in the TCAO. The investigation began with the California Secretary of State’s records that purport to list Campbell Industries as an “active corporation.” Those records identify Robert Howard, Esq. of Latham & Watkins as Campbell Industries’ “registered agent for service of process.” Counsel for BAE Systems contacted Mr. Howard by telephone. Mr. Howard expressed surprise at learning that he was named as Campbell Industries’ registered agent, said he had never known about or agreed to that role, and would have to figure out how to divest himself of that role. Mr. Howard described Campbell Industries as “a shell” and declined to provide any guidance on how BAE Systems might communicate with a spokesperson for Campbell Industries. *See* memoranda to file by Christian Volz dated September 27, 2007 and October 1, 2007, Exhibits 2 and 3 hereto. This is compelling evidence that the documentation at the Secretary of State’s office is a sham and that Campbell Industries is not, in fact, an active corporation.

BAE Systems also made repeated efforts to contact authorized spokespersons for Campbell Industries and MARCO at MARCO’s last known operating facility, located in Washington State. BAE Systems started with the phone number listed on H. Allen Fernstrom’s July 27, 2004 letter to the Regional Board, quoted above. That line, 206/285-3200, is still in service and has a voice message announcing that the caller has reached the “MARCO/Campbell family of companies.” Calling for BAE Systems, Mr. Volz first reached Jan Fisk in the Personnel Department. From Ms. Fisk, Mr. Volz learned that H. Allen Fernstrom had retired as General Manager, and that Mr. Peter Schmidt is the senior MARCO executive who would be

able to respond to questions about MARCO/Campbell Industries' former San Diego operations. Ms. Fisk would not provide a phone number or email address for Mr. Schmidt, but agreed to forward to Mr. Schmidt's attention an email from Mr. Volz describing BAE Systems' concerns. *See* memorandum to file by Christian Volz dated October 4, 2007, Exhibit 4 hereto. *See also* email from Christian Volz to Jan Fisk dated October 1, 2007, Exhibit 5 hereto, describing the TCAO proceeding and urgently requesting a communication from Mr. Schmidt regarding MARCO/Campbell's intentions. No response was ever received from Mr. Schmidt in response to this email.

In additional telephone calls, Mr. Volz was informed that MARCO's current General Manager is Mr. Dick Boehm. Mr. Volz left a detailed voicemail for Mr. Boehm on October 4, 2007, and succeeded in reaching him by telephone on October 10, 2007. Mr. Boehm disavowed any knowledge of the TCAO or of MARCO/Campbell's prior operations in San Diego. He said that he was General Manager of a new Washington State corporation named "MARCO Global" that had been formed in 2004 or 2005 and that had purchased certain assets of the "old MARCO." Mr. Boehm said that the MARCO shipyard in Washington closed in 2004-2005 and laid everyone off, and that a "professional auction house" had auctioned off the company's assets. He said that the new company, MARCO Global, is owned by "South American" persons or entities. *See* memoranda to file by Christian Volz dated October 4, 2007 and October 10, 2007, Exhibits 6 and 7 hereto. *See also* copy of news article dated January 19, 2005 describing the shutdown of MARCO's Washington shipyard, Exhibit 8 hereto.

On October 10, Mr. Volz obtained a direct email address for Mr. Peter Schmidt, pgschmidt@marcoglobal.com. Mr. Volz sent another detailed email to Mr. Schmidt urgently requesting a statement of MARCO/Campbell's intentions with respect to the TCAO, and warning that continued refusal to respond would be construed as proof of recalcitrance and reported as such to the Regional Board and other named dischargers. Mr. Volz also resent a copy of a prior email directed to Mr. Schmidt *via* Jan Fisk. *See* emails from Mr. Volz to Mr. Schmidt and Ms. Fisk dated October 10, 2007, Exhibits 9, 10, and 11 hereto. Mr. Volz never received any response from Mr. Schmidt, or from any other person representing MARCO or Campbell Industries.

BAE Systems respectfully submits that it is obvious that MARCO and Campbell Industries are recalcitrant parties that will not participate in this proceeding and will not, and probably cannot, be financially responsible for any contamination created by the operations of the SDMC entities on the BAE leasehold between 1915 and 1979. It is therefore necessary and appropriate that the Port District and the City, whose liability for such contamination would be "secondary" to MARCO's and Campbell's liabilities, be designated as "dischargers" with primary responsibility for any contamination at the BAE leasehold prior to 1979.

**THE RELEVANT LEASE DOCUMENTS CLEARLY ESTABLISH
THAT THE PORT DISTRICT AND CITY, NOT BAE SYSTEMS, ARE RESPONSIBLE
FOR THE CONTAMINATION CAUSED BY THE SDMC ENTITIES**

In prior correspondence to the Regional Board concerning the subject of its potential liability for any pre-1979 contamination at the BAE leasehold, the Port District has made a number of inaccurate, misleading, and otherwise invalid legal and factual arguments based on the terms of its leases with BAE Systems and its predecessor, Southwest Marine, Inc. These arguments were contained in a letter dated July 15, 2004. In anticipation that the Port District may reassert some or all of those arguments in response to the current pleading by BAE Systems, we discuss and rebut those arguments below.

The Port District asserted that “[i]n 1979, Southwest Marine took over the prior lease between the Port and Southwest Marine’s predecessor-in-interest, San Diego Marine Construction Company (“SDMC”). . . SDMC operated until its successor, Southwest Marine took over in 1979. . . .” July 15, 2004 letter at 15. These statements are blatantly untrue. As the Port District is certainly aware, Southwest Marine did not “take over” the prior lease between the Port District and SDMC. On the contrary, the record is clear that the Port District terminated the prior lease with SDMC effective August 31, 1979, and accepted a surrender of the lease and the leased premises from SDMC. Technical Report at 5-4, and Appendix at Section 5, Tab C. The Port District then entered into an entirely new lease with Southwest Marine, effective September 1, 1979. *Id.* This sequence of lease termination followed by a new lease provides no basis for deeming Southwest Marine the “successor” of SDMC, or SDMC Southwest Marine’s “predecessor-in-interest”; and it is simply untrue to say that Southwest Marine “took over the prior lease.”

The Port District next made the far-fetched argument that an “Acceptance of Premises” clause in its lease with Southwest Marine somehow constituted an assumption by Southwest Marine of any and all environmental liabilities associated with pre-existing contamination on the leasehold. This clause, which was not in the 1979 lease but was added in a first amendment to the Agreement on April 23, 1985, reads as follows:

“38. ACCEPTANCE OF PREMISES: By signing this Lease, Lessee represents and warrants that it has independently inspected the premises and made all tests, investigations and observations necessary to satisfy itself of the conditions of the premises. Lessee agrees that it is relying solely on such independent inspection, tests, investigations and observations in making this Lease. Lessee further acknowledges that the premises are in the condition called for by this Lease, that Lessor has performed all work with respect to premises and that Lessee does not hold Lessor responsible for any defects in premises.”

Id. at 15-16.

There is obviously nothing in this clause that even refers to environmental conditions or contamination, or that suggests any attempt to assign or allocate legal responsibility for such contamination. Such contractual assignments, assumptions, and allocations of liability for environmental conditions are customary and can be accomplished by clear, well-drafted contract provisions – but this is not such a provision. This provision clearly relates only to the suitability of the premises for the lessee’s intended purposes, and provides that the lessee has no right to demand improvements from lessor.

The Port District’s third argument was as follows:

Southwest Marine also expressly agreed to indemnify and hold the Port harmless for any liability “resulting directly or indirectly from granting and performance of [the] lease or arising from *the use and operation* of the leased premises *or any defect in any part thereof.*” *Id.* at ¶ 21. Thus, Southwest Marine expressly represented and agreed, at the time it entered into its Lease, that it was satisfied with the condition of the premises, that the Port had no responsibility for the then-existing conditions on the premises, and that Southwest Marine would indemnify the Port for any liability arising from Southwest Marine’s operations and for any defects in the premises.

Id. at 16 (emphasis in the 2004 letter, not in the quoted lease).

This indemnity claim is based on an incomplete and misleading quotation from the indemnity clause that was in the Port District’s lease with BAE Systems between 1979 and 1997. Contrary to the Port District’s statement that the clause committed BAE Systems to indemnify the Port District against “any liability,” the indemnity clause in effect from 1979 to 1997 *in fact* was expressly limited to liabilities for “damage to property” and “injury or death of any person or persons,” in either case “resulting from the use and operation of the Leased premises or any defect in any part thereof.” The Port District’s liability under California Water Code § 13304 for necessary costs of remediation of contamination caused by discharges on and from its leased property is not a liability for “property damage” or “injury or death of any person.” Nor, with respect to any contamination existing prior to BAE Systems’ tenancy in September 1979, does the Port District’s liability under § 13304 arise from *BAE Systems’* use of the leased premises or from any defect in the leased premises.

The Port District’s indemnity argument is particularly misleading in that it is based on an indemnity clause that no longer exists in its current lease with BAE Systems. The Port District and BAE Systems entered into a second amendment to the subject lease on November 18, 1997 which replaced certain lease provisions and added others. One of the lease provisions that was replaced was paragraph 21, the “Hold Harmless” provision. The new provision, which has been in effect since November 18, 1997, reads as follows:

21. **HOLD HARMLESS:** Lessor, and its agents, officers, and employees shall, to the full extent allowed by law, be held by Lessee free and harmless from and indemnified against any liability pertaining to or arising out of the use and operation of the premises by Lessee and any costs or expenses incurred on account of any claim or claims therefore, including reasonable attorney's fees. Nothing herein is intended to exculpate Lessor from its sole active negligence or willful misconduct.

This clause clearly limits BAE Systems' indemnification of the Port District solely to liabilities "arising out of the use and operation of the leased premises by lessee [BAE Systems]." This indemnity is in some respects broader than the one it replaced: it is not limited to property damage and personal injury, and so could extend to liabilities arising under § 13304. Because it is expressly limited to liabilities arising out of BAE Systems' operations on the leased premises, however, it obviously does not indemnify the Port District against liabilities resulting from contamination attributable to operations on the leased premises prior to September 1979.

The November 18, 1997 second amendment to the lease also added a new clause that explicitly addresses the issue of responsibility for "hazardous substances" and "contaminants," including potential responsibility to perform remedial actions such as those that may be required in a final version of the TCAO. That clause, paragraph 44 of the amended lease, is included as Exhibit 12 hereto. Like the "Hold Harmless" clause, quoted above, paragraph 44 provides that BAE Systems' responsibilities and liabilities arising out of or with respect to such "contaminants" are expressly limited to "Contaminants arising out of the occupancy or use of the leased premises by lessee [BAE Systems]."

These two provisions of BAE Systems' *current* lease specifically and conclusively define the scope of BAE Systems' responsibility with respect to contamination on the leased premises. BAE Systems is wholly responsible for any such contamination caused by its own occupancy or use of the leased premises, and is obliged to defend and indemnify the Port District against any liability arising out of BAE Systems' use and occupancy of the leased premises. BAE Systems has no liability or responsibility whatsoever with respect to any contamination that was not caused by its own use and occupancy of the premises, including but not limited to any contamination already existing at the time BAE Systems first began to use and occupy the premises in September 1979; and BAE Systems certainly has no obligation to defend or indemnify the Port District with respect to liabilities arising out of any pre-September 1979 contamination.

CONCLUSION

The entities legally responsible for any pre-1979 contamination on and attributable to the BAE Systems leasehold are Campbell Industries, MARCO, the Port District, and the City. Because MARCO and Campbell Industries are recalcitrant and probably nonexistent, unless the Regional Board names the Port District and the City as dischargers, there will be no party

designated in the TCAO as responsible for the pre-1979 operations on the BAE Systems leasehold and any resulting contamination. It is not in the Regional Board's interests, or in the other participating dischargers' interests, or in the public interest for a final Cleanup and Abatement Order to be adopted with such a conspicuously "empty chair" among the ranks of named dischargers who will be expected to fund the work that will be required.

In justifying its stated intention not to name the Port District as a discharger, the Regional Board observed in the Technical Report that "[t]he major Shipyard Sediment Site investigations to determine the extent of pollution at the Shipyard Sediment Site were satisfactorily completed by NASSCO and [BAE Systems] . . . Naming the Port of San Diego in the Cleanup and Abatement Order at this juncture may create an additional adversarial situation and hinder cooperation with the Regional Board in a cleanup that is already highly contested by other dischargers" Technical Report at 1 – 12. These statements reflect a profound misapprehension both of BAE Systems' position and intentions, and of the Regional Board's ability to avoid an "adversarial situation" regarding the unavoidably contentious issue of how to share the costs of the work that may be required at the Shipyard Sediment Site. While it is true that BAE Systems has paid half of all costs incurred in the Shipyard Sediment Site investigations (with NASSCO paying the other half) without any contribution from the SDMC entities, the Port District, or the City, BAE Systems has done so unwillingly and with the firm intention of obtaining equitable contributions from those entities at the earliest possible date, and certainly no later than the date when any actual remediation costs will be incurred pursuant to the Order. Because BAE Systems has long recognized that no contributions would be forthcoming from the SDMC entities, BAE Systems has tried repeatedly since at least 2004 to have the Port District named as a discharger so that it (and the City) can assume the liability their pre-1979 tenants are unable or unwilling to assume. BAE Systems has no intention of continuing to pay an unjust and disproportionate share of the costs of the Shipyard Sediment Site remediation and is unwilling to fund, even provisionally, the share of remediation costs that is attributable to pre-1979 contamination at the BAE leasehold.

The Regional Board cannot avoid an "adversarial situation" between BAE Systems and the City and Port District by refusing to designate those parties as dischargers. The adversarial situation regarding pre-1979 contamination is a fact, and it is best addressed in the context of allocation discussions among named dischargers now and in the near future, prior to the date significant remediation costs are incurred. By refusing to name the City and Port District as dischargers, the Regional Board will actually increase the level of adversity between those parties and BAE Systems by leaving BAE Systems no apparent recourse but to initiate litigation to recover contribution for study costs already incurred, and a judicial determination of responsibility for remedial costs to be incurred.

For all the foregoing reasons, BAE Systems respectfully requests that the San Diego Unified Port District and the City of San Diego be named as dischargers in this matter with respect to contamination attributable to operations on the BAE Systems leasehold prior to September 1, 1979. BAE Systems further requests that the Presiding Officer rule on this request immediately, within 30 days, rather than at the end of the current proceedings so that BAE

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Systems can determine whether it will be necessary to initiate a collateral lawsuit to protect its rights.

Respectfully submitted,

MCKENNA LONG & ALDRIDGE LLP

By: 
Christian Volz
Attorneys for BAE Systems
San Diego Ship Repair Inc.

CV/gmp

cc: Service List (attached)

SF:27267634.5

Mr. David King
April 8, 2008
Page 12

SERVICE LIST

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dmerk@portofsandiego.org
emaher@portofsandiego.org
lfitzger@portofsandiego.org
akleis@sandiego.gov
fortlieb@sandiego.gov
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FMelbourn@waterboards.ca.gov
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MMcCann@waterboards.ca.gov
PWyels@waterboards.ca.gov
TAla@waterboards.ca.gov
LCosta@waterboards.ca.gov

EXHIBIT 1

L E A S E .

THIS INSTRUMENT, made and entered into this 5th day of April, A. D. 1915, by and between The City of San Diego, a municipal corporation in the County of San Diego, State of California, hereinafter designated as the City, and the San Diego Marine Construction Company, a corporation organized and existing under and by virtue of the laws of the State of California, hereinafter designated as the Lessee.

WITNESSETH:

That the said City does by these presents demise and lease unto the said Lessee all those lands bordering and extending into the Bay of San Diego and being a portion of those lands conveyed to the City of San Diego by the State of California through the provisions of that certain act of the legislature of the State of California, entitled as follows: "An act conveying certain tide lands and land lying under inland navigable waters situated in the Bay of San Diego to the City of San Diego in furtherance of navigation and commerce and the fisheries; and providing for the government management and control thereof," approved on the first day of May, 1911, and more particularly described as follows: to-wit:

Beginning at a point where the easterly line of Sampson Street extended southerly intersects the mean high tide line of the Bay of San Diego, thence south 39° west about 1250 feet along said easterly line of Sampson Street extended to an intersection with the United States pier-head line of the Bay of San Diego, thence north 56° 51' west 200 feet along said pier-head line, thence north 30° east about 1220 feet along a line parallel to the said easterly line of Sampson Street to an intersection with the mean high tide line of the Bay of San Diego, thence along said mean high tide line in a southeasterly direction to the point of beginning.

EXHIBIT 2

McKenna Long
& Aldridge LLP
Attorneys at Law

MEMORANDUM

TO: FILE - BAE SAN DIEGO SHIP REPAIR **CLIENT-MATTER No.:** 18788.0013
FROM: CHRISTIAN VOLZ 
DATE: SEPTEMBER 27, 2007
RE: ATTEMPT TO CALL ROBERT HOWARD

At about 10:45 a.m. today, September 27th, I placed a call to Robert Howard of Latham & Watkins, at 619/236-1234. I was calling him because he is identified in the California Secretary of State's records as the agent for service of process of Campbell Industries, Inc. and in other documents as an attorney representing Campbell Industries, its predecessor, San Diego Marine Ship Repair, and/or its parent, Marine Construction and Design Co.

My call was directed to Mr. Howard's voicemail. I identified myself by name and as counsel for BAE Systems San Diego Ship Repair, Inc. I explained I was calling him as Campbell Industries' agent and attorney to inquire as to Campbell Industries' intentions to participate in the Regional Water Board's TCAO process in which Campbell Industries is named as a "discharger" as a result of its activities as a tenant on the current BAE System's leasehold prior to BAE System's commencement of operations. I requested that he return my call to discuss the matter.

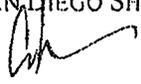
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EXHIBIT 3

McKenna Long
& Aldridge,^{LLP}
Attorneys at Law

MEMORANDUM

TO: BAE SYSTEMS SAN DIEGO SHIP REPAIR
FROM: CHRISTIAN VOLZ 
DATE: OCTOBER 1, 2007
RE: CONVERSATION WITH ROBERT HOWARD

At about 3:00 p.m. today, Mr. Howard of Latham & Watkins called me in response to the voicemail message I had left him late last week.

Mr. Howard said he was slow to return my call because he had needed to investigate my statement that he was identified as the registered California agent for service of process on Campbell Industries. He said he was "surprised" to find that I was correct, and said he had never known about or agreed to that role and "guessed" that someone at the company had so designated him in connection with the company's discontinuation of operations. He said he would "have to figure out how to divest himself" of the role as Campbell's designated agent.

Mr. Howard was pleasant but not helpful or responsive. He stated that he does not represent the company (Campbell) with respect to the TCAO and lacks any detailed knowledge of the TCAO. He said that Campbell is "not an active company." He said he worked for the company "in connection with the closure of its shipyard" in San Diego. When pressed as to whether he currently represents Campbell in any respect, he demurred and referred to privilege.

He described Campbell as "a shell" and was aware that Mr. Fernstrom had resigned. He could not or would not provide contact information for Mr. Fernstrom, saying he was "back East" somewhere probably in an RV. I asked him for help in identifying and contacting Mr. Fernstrom's successor as CEO, or GM, and described my discussions with Jan Fiske and attempts to reach Mr. Schmidt. He was noncommittal and said Mr. Schmidt was probably the right person to contact.

CV/gmp

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EXHIBIT 4

McKenna Long
& Aldridge, LLP
Attorneys at Law

MEMORANDUM

TO: BAE SYSTEMS SAN DIEGO SHIP REPAIR
FROM: CHRISTIAN VOLZ 
DATE: OCTOBER 4, 2007
RE: CONVERSATION WITH JAN FISK/MARCO

I spoke today with Jan Fisk, who is in the personnel department of Marine Design and Construction Company ("MARCO") regarding the email I sent her on Monday, October 1st, for her to forward to the attention of Mr. Peter Schmidt. Ms. Fisk's direct dial is 206/352-3113. I had reached her by phone on Monday, October 1st, by dialing the general outside phone number for MARCO that appears on H. Allen Fernstrom's letter to John Robertus dated July 27, 2004. That line, 206/285-3200, announces that one has reached the "MARCO/Campbell family of companies."

From my conversation with Ms. Fisk on October 1st, I learned that H. Allen Fernstrom had retired and that Peter Schmidt is the senior MARCO executive who would be able to respond to my inquiries about Campbell Industries' former San Diego operations. She promised to forward an email from me explaining my/BAE's concerns to Mr. Schmidt. I drafted a detailed email for Mr. Schmidt's attention and sent it to Ms. Fisk on October 1st. I have received no telephone or email reply from Mr. Schmidt as of noon on October 4th.

In my brief conversation with Ms. Fisk today, she confirmed that she had received my email and had forwarded it as promised, and said that any response would have to come from Mr. Schmidt.

CV/gmp

SF:27260154.1

EXHIBIT 5

Volz, Chris

From: Volz, Chris
Sent: Monday, October 01, 2007 1:17 PM
To: 'Jan Fisk (jfisk@marcoglobal.com)'
Subject: Information about former San Diego Shipyard operations to communicate to Mr. Schmidt

Dear Ms. Fisk: Thank you for speaking with me this afternoon, and for agreeing to help me to communicate with Mr. Schmidt regarding the matter we discussed. Briefly, the matter is the following:

I am an attorney representing BAE Systems San Diego Ship Repair, Inc. ("BAE Systems"), formerly known as Southwest Marine, Inc. BAE Systems currently operates a ship repair, maintenance and overhaul facility on a parcel of land leased from the San Diego Unified Port District. BAE Systems and its predecessor Southwest Marine have operated at this location since 1979. Prior to 1979, and more specifically, between 1914 and 1979, San Diego Marine Construction Company and its successor San Diego Marine Construction Corporation, a wholly owned subsidiary of Campbell Industries, Inc, which in turn is a wholly owned subsidiary of Marine Design and Construction Company ("MARCO") operated a ship repair, maintenance and overhaul facility on this exact same location under leases from the Port District and prior to the formation of the Port District, from the City of San Diego.

As a result of nearly a century's worth of ship repair and maintenance activities and other marine and industrial activities by numerous entities INCLUDING BUT NOT LIMITED TO BAE Systems, SDMC, Campbell Industries and MARCO, the marine bottom sediments at and near the current BAE/former MARCO leasehold have become contaminated with various pollutants. A California State regulatory agency, the San Diego Regional Water Quality Control Board, has issued a "Tentative Cleanup and Abatement Order" ("TCAO") to six named entities (named as "dischargers" based on findings that their operations discharged pollutants into the water and harbor sediments) directing them to perform a costly dredging action to remove many thousands of cubic yards of contaminated marine sediments from San Diego harbor. The six named entities are:

1. National Steel and Shipbuilding Company
2. BAE Systems San Diego Ship Repair, Inc. (formerly Southwest Marine, Inc.)
3. City of San Diego
4. Marine Construction and Design Company and Campbell Industries, Inc.
5. San Diego Gas and Electric, a subsidiary of Sempra Energy Company, and
6. United States Navy

Of these six named entities, five have responded and have been cooperating and coordinating with each other to challenge certain aspects of the Regional Board's TCAO and to prepare for the performance of necessary dredging work, if any, when the legal challenges have been adjudicated and work is required to be done. The one named entity that has NOT responded to the TCAO and has not given any indication of its intentions to participate in the upcoming public hearing process and if necessary, in the subsequent performance of work is MARCO/Campbell Industries.

MARCO/Campbell's intentions in this matter of grave importance to all the other five named "dischargers" and especially so to BAE Systems, the current tenant on the facility where MARCO/Campbell and their predecessors did business for 65 years. The Regional Board's TCAO contains detailed discussions and findings regarding MARCO/Campbell's operations during that period and its discharges of waste that contributed to the pollution in the harbor sediments. If you do not have copies of this document and related documents, I will be happy to forward copies to you.

It is imperative that we hear from the owners and management of MARCO/Campbell Industries regarding their intentions to participate in the upcoming proceedings, and to accept financial responsibility for the share of any

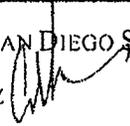
contamination and associated dredging costs attributable to their 65 years of operations at the current BAE Systems leasehold. I respectfully request that Mr. Schmidt call me at 415-267-4108 to discuss this matter, or have his/MARCO's/Campbell Industries' counsel or other authorized representative call me to discuss it.

Thank you again for your assistance.

EXHIBIT 6

McKenna Long
& Aldridge^{LLP}
Attorneys at Law

MEMORANDUM

TO: BAE SYSTEMS SAN DIEGO SHIP REPAIR
FROM: CHRISTIAN VOLZ 
DATE: OCTOBER 4, 2007
RE: VOICEMAIL TO MARCO GENERAL MANAGER DICK BOEHM

After my brief discussion with Ms. Fisk, I returned to the MARCO main phone line and voicemail system, and worked my way to the "operator." I asked to speak to someone at a management level in MARCO, and was told that the General Manager is Dick Boehm (presumably, Allen Fernstrom's successor). I asked to speak to Mr. Boehm and was told he was at lunch. I then asked for, and was connected to, his voicemail. I left a detailed voicemail identifying myself as counsel for BAE Systems San Diego Ship Repair, successor to Southwest Marine, doing business in San Diego on the premises occupied by Campbell Industries prior to 1979. I said that MARCO and Campbell had been named as "dischargers" along with BAE Systems and others with respect to contaminated sediments in the harbor, and that I was calling to determine MARCO/Campbell's intentions with respect to that designation and the related proceeding. I requested that he return my call to discuss the matter.

CV/gmp

SF:27260148.1

EXHIBIT 7

McKenna Long
& Aldridge LLP
Attorneys at Law

MEMORANDUM

TO: BAE SYSTEMS SAN DIEGO SHIP REPAIR
FROM: CHRISTIAN VOLZ 
DATE: OCTOBER 10, 2007
RE: CONVERSATION WITH DICK BOEHM, MARCO GENERAL MANAGER

This afternoon, October 10th, I called MARCO/Campbell's main line (206/285-3200) and asked to be connected to Mr. Boehm. He answered his line.

I introduced myself and referred to my prior, detailed voicemail. Mr. Boehm said he had been having trouble with his computer and voicemail, and had not received my voicemail. I then repeated the essential information, namely, that I was calling on behalf of BAE Systems to determine what MARCO and Campbell Industries, both named as dischargers in the TCAO based on their and their predecessors' operations at the current BAE Systems Leasehold from 1914 to 1979, intended to do with respect to the TCAO and their portion of responsibility for the contaminated sediments.

Mr. Boehm disavowed any knowledge of the TCAO or the companies' prior operations in San Diego. He said that he was General Manager of a new, Washington State corporation, MARCO Global, that had been formed in approximately 2004 - 2005 and had purchased certain assets of the "old company," MARCO. He said the MARCO shipyard closed in 2004 - 2005 and "laid everyone off," and had a professional "auction house" auction off the company's assets. The new company, MARCO Global, is owned by "South American" persons or entities.

Mr. Boehm said Allen Fernstrom still consulted with MARCO Global and might be more knowledgeable, but he did not know how to contact Mr. Fernstrom. He directed me to "Bobby Miles," personal secretary to Peter Schmidt, as a conduit to communicate with Mr. Schmidt. Ms. Miles' email is bmiles@readersbooks.net. This same afternoon, Lloyd Schwartz forwarded me an email that provided Mr. Schmidt's direct email address: pgschmidt@marcoglobal.com. It is noteworthy that it is a "marcoglobal" address. I subsequently re-sent to Mr. Schmidt the same emails previously sent to him via Ms. Fisk.

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EXHIBIT 8

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BUSINESS

Wednesday, January 19, 2005

Shipbuilder Marco Marine is calling it quits after 52 years

By JOHN COOK
SEATTLE POST-INTELLIGENCER REPORTER

After 52 years of building trawlers, tugboats and other vessels on the Lake Washington Ship Canal, Peter Schmidt has decided to relinquish the helm.

The 83-year-old founder and president of Marco Seattle is shutting down the large shipyard near Fishermen's Terminal because of a prolonged slump in the boat-building business. About 50 people are losing their jobs, with the operation set to close later this week.

"There aren't any orders," said Schmidt, who founded the company in 1953 after working as a naval architect and serving on a tanker and an attack transport during World War II. "We just don't have the level of work we had historically."

Schmidt plans to sell the 5.5-acre property for about \$10 million or lease space in some of the 10 buildings that border Salmon Bay. Zoning laws require that the site continue to be used in an industrial capacity, he said.



Zoom Phil H. Webber / P-I
Dock master Al Brands has worked at the Marco shipyard for 27 years. When it closes this week, he will be looking elsewhere for work.

Known worldwide for well-crafted crab boats, tuna seiners and hydraulic fishing machinery, Marco rose to prominence during the king crab boom that started in the 1970s. By the 1980s when it was making gillnetters for the Alaskan salmon fisheries, it employed more than 800 people in Seattle.

But the business declined in recent years as new regulations created an oversupply of fishing boats and equipment, Schmidt said. As a result of that glut, the company was reduced to doing repair work on existing vessels. In the past five years, it built just 14 new boats -- 12 tugs and two pilot vessels. Because of the number of competitive bidders for those projects, Schmidt said, the business was not very lucrative.

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Shipbuilder Marco Marine is calling it quits after 52 years

Page 2 of 3

"I've held on too long," said Schmidt, who plans to spend more time with his grandchildren and racing his 40-foot sailboat. "I have a lot of things I want to do in this world. It is not an exciting business anymore."

Marco will continue to run fishing, boat-building and mining operations in Chile and Peru under the direction of Schmidt's son, Hans. The company, which set up operations in Chile in 1960, now has about 600 employees in South America who harvest swordfish and scallops and build 300-foot tuna seiners. It will keep an international sales office in Seattle and a small manufacturing facility.

The demise of Marco's Seattle shipyard caught some by surprise.

"Wow. That is quite a shock," said Port of Seattle spokesman Mick Shultz. "They have been around a long time, and they are an important shipyard in Seattle."

Asked whether the port would be interested in acquiring the Marco property, Schultz declined comment.

Others said that Seattle is losing one of its best-known boat builders.

"Their reputation as a quality shipbuilder was excellent," said George Neilson, president of Lake Union Dry Dock, a longtime Seattle competitor. He called the closure "one of the unfortunate realities" of the boat-building business.

"We have been seeing a pretty depressed market for four or five years," Neilson said. "It is a struggle."

Matt Nichols, chief executive of Nichols Brothers Boat Builders on Whidbey Island, said his firm competed "neck and neck" with Marco for more than four decades.

"Peter (Schmidt) is a very good competitor," said Nichols, who stopped by the Marco's Seattle operation this week to say goodbye. "Peter was always a straight shooter and never pulled any punches."

Nichols called the decision to close Marco a smart move given the poor economy and the increasing regulatory environment in the state.

"There is just not much work out there," said Nichols, who expects other shipbuilders to trim back as well. "We are all struggling to get jobs."

The closure of Marco's Seattle shipyard was especially rough on the employees, some of whom worked on the docks for decades.

"The people who were most recently laid off had been there the longest and knew each other the best," said Bob McMahon, who is losing his job as general manager of the shipyard division after 32 years. "They had been friends for 20, 30 or 40 years. It was very difficult. For most of them, it has been their lifetime jobs."

The 61-year-old said he is hopeful that another shipbuilder will buy the property and rehire the work force.

That is also the hope of Chuck Hughes, who represented about two dozen welders and fabricators at Marco as business manager of Boilermakers Local 104.

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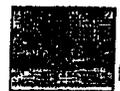
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- Leahy blast Boeing over A380 "too

Shipbuilder Marco Marine is calling it quits after 52 years

"It is tragic," Hughes said. "There are only seven or eight full-service union shipyards in Seattle, so the loss of any one is significant."

With an increase in repair work at naval shipyards and on the Washington state ferries, Hughes said the laid-off workers should be able to find jobs this year. Still, he said Marco's disappearance from Seattle is a big blow.

"It is one of those employers that absolutely saddens us to lose," Hughes said. "They have been a loyal union employer. It was heartbreaking news."

P-I reporter John Cook can be reached at 206-448-8075 or johncook@seattlepi.com

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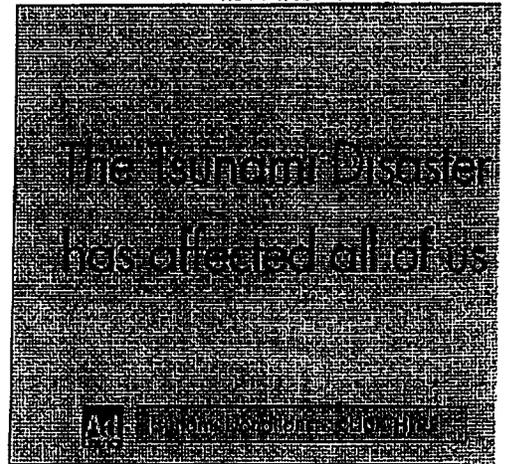
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EXHIBIT 9

Volz, Chris

From: Volz, Chris
Sent: Wednesday, October 10, 2007 1:15 PM
To: 'Jan Fisk (jfisk@marcoglobal.com)'
Subject: Another email for Peter Schmidt

Dear Ms. Fisk: please forward this email to Mr. Schmidt via his secretary, as you were kind enough to do with my prior email.

Dear Mr. Schmidt:

I am informed that you have received my prior email, so you know that I am writing on behalf of BAE Systems San Diego Ship Repair, Inc., formerly Southwest Marine, Inc., the company currently performing ship repair and maintenance operations on the same leasehold on San Diego Harbor where Campbell Industries and its predecessor San Diego Marine Construction Co. performed similar operations between 1914 and 1979.

I won't repeat the detailed discussion that I included in my prior email. The purpose of this email is to request, again, that you or some other authorized representative of Campbell Industries or MARCO contact me to discuss how Campbell/MARCO intend to respond to the Tentative Cleanup and Abatement Order, issued by the San Diego Regional Water Quality Control Board, that names both Campbell and MARCO as "dischargers" responsible for the contamination of the sediments in San Diego harbor at, and near, the location of their former ship repair and maintenance operations. I have attempted to contact you; I have left a detailed voicemail for MARCO General Manager Dick Boehm (and will leave another); and I have spoken with Robert Howard of Latham & Watkins, who is designated on the California Secretary of State's website as the authorized agent for service of process for Campbell Industries. In each case, I have requested information regarding Campbell/MARCO's intentions. Neither you nor Mr. Boehm nor any other Campbell/MARCO representative have responded to my requests. Mr. Howard stated that he has no knowledge of Campbell/MARCO's designation in the Tentative Order or of their intentions with respect to that Order, and he declined to assist me in reaching any representative of the companies.

Please call me at 415-267-4108 to discuss this matter. Unless I hear from you or some other representative of Campbell/Marco by Monday, October 15, we will draw the unavoidable conclusion that Campbell/Marco have adopted a deliberate posture of avoidance and recalcitrance with respect to the Tentative Order and their liability for the contamination caused by their former operations at the San Diego harbor leasehold, and we will so inform the Regional Water Quality Control Board, The City of San Diego, San Diego Unified Port District, and the other parties named as "dischargers" in the tentative order.

EXHIBIT 10

Volz, Chris

From: Volz, Chris
Sent: Wednesday, October 10, 2007 3:08 PM
To: 'pgschmidt@marcoglobal.com'
Subject: FW: Another email for Peter Schmidt

Mr. Schmidt: the email below is one I attempted to send you via Ms. Fisk earlier today. I will also send you directly the lengthier email that I refer to in the one that is attached. I would greatly appreciate it if you would call me to discuss this matter. Since I sent the attached email, I have spoken to Mr. Boehm who disavows any knowledge of former San Diego operations and says that you are the person to address my/BAE Systems' questions.

From: Volz, Chris
Sent: Wednesday, October 10, 2007 1:15 PM
To: 'Jan Fisk (jfisk@marcoglobal.com)'
Subject: Another email for Peter Schmidt

Dear Ms. Fisk: please forward this email to Mr. Schmidt via his secretary, as you were kind enough to do with my prior email.

Dear Mr. Schmidt:

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EXHIBIT 11

Volz, Chris

From: Volz, Chris
Sent: Wednesday, October 10, 2007 3:09 PM
To: 'pgschmidt@marcoglobal.com'
Subject: FW: Information about former San Diego Shipyard operations to communicate to Mr. Schmidt

Here is that prior email with additional detail about the San Diego harbor matter and BAE Systems' questions.

From: Volz, Chris
Sent: Monday, October 01, 2007 1:17 PM
To: 'Jan Fisk (jfsk@marcoglobal.com)'
Subject: Information about former San Diego Shipyard operations to communicate to Mr. Schmidt

Dear Ms. Fisk: Thank you for speaking with me this afternoon, and for agreeing to help me to communicate with Mr. Schmidt regarding the matter we discussed. Briefly, the matter is the following:

I am an attorney representing BAE Systems San Diego Ship Repair, Inc. ("BAE Systems"), formerly known as Southwest Marine, Inc. BAE Systems currently operates a ship repair, maintenance and overhaul facility on a parcel of land leased from the San Diego Unified Port District. BAE Systems and its predecessor Southwest Marine have operated at this location since 1979. Prior to 1979, and more specifically, between 1914 and 1979, San Diego Marine Construction Company and its successor San Diego Marine Construction Corporation, a wholly owned subsidiary of Campbell Industries, Inc, which in turn is a wholly owned subsidiary of Marine Design and Construction Company ("MARCO") operated a ship repair, maintenance and overhaul facility on this exact same location under leases from the Port District and prior to the formation of the Port District, from the City of San Diego.

As a result of nearly a century's worth of ship repair and maintenance activities and other marine and industrial activities by numerous entities INCLUDING BUT NOT LIMITED TO BAE Systems, SDMC, Campbell Industries and MARCO, the marine bottom sediments at and near the current BAE/former MARCO leasehold have become contaminated with various pollutants. A California State regulatory agency, the San Diego Regional Water Quality Control Board, has issued a "Tentative Cleanup and Abatement Order" ("TCAO") to six named entities (named as "dischargers" based on findings that their operations discharged pollutants into the water and harbor sediments) directing them to perform a costly dredging action to remove many thousands of cubic yards of contaminated marine sediments from San Diego harbor. The six named entities are:

1. National Steel and Shipbuilding Company
2. BAE Systems San Diego Ship Repair, Inc. (formerly Southwest Marine, Inc.)
3. City of San Diego
4. Marine Construction and Design Company and Campbell Industries, Inc.
5. San Diego Gas and Electric, a subsidiary of Sempra Energy Company, and
6. United States Navy

Of these six named entities, five have responded and have been cooperating and coordinating with each other to challenge certain aspects of the Regional Board's TCAO and to prepare for the performance of necessary dredging work, if any, when the legal challenges have been adjudicated and work is required to be done. The one named entity that has NOT responded to the TCAO and has not given any indication of its intentions to participate in the upcoming public hearing process and if necessary, in the subsequent performance of work is MARCO/Campbell Industries.

MARCO/Campbell's intentions in this matter of grave importance to all the other five named "dischargers" and especially so to BAE Systems, the current tenant on the facility where MARCO/Campbell and their predecessors

did business for 65 years. The Regional Board's TCAO contains detailed discussions and findings regarding MARCO/Campbell's operations during that period and its discharges of waste that contributed to the pollution in the harbor sediments. If you do not have copies of this document and related documents, I will be happy to forward copies to you.

It is imperative that we hear from the owners and management of MARCO/Campbell Industries regarding their intentions to participate in the upcoming proceedings, and to accept financial responsibility for the share of any contamination and associated dredging costs attributable to their 65 years of operations at the current BAE Systems leasehold. I respectfully request that Mr. Schmidt call me at 415-267-4108 to discuss this matter, or have his/MARCO's/Campbell Industries' counsel or other authorized representative call me to discuss it.

Thank you again for your assistance.

EXHIBIT 12

44. HAZARDOUS MATERIALS: Lessee shall comply with all laws regarding hazardous substances, materials or wastes, or petroleum products or fraction thereof (herein collectively referred to as "Contaminants") relative to occupancy and use of the leased premises. Lessee shall be liable and responsible for any Contaminants arising out of the occupancy or use of the leased premises by Lessee. Such liability and responsibility shall include, but not be limited to, (i)

removal from the leased premises any such Contaminants; (ii) removal from any area outside the leased premises, including but not limited to surface and groundwater, any such Contaminants generated as part of the operations on the leased premises; (iii) damages to persons, property and the leased premises; (iv) all claims resulting from those damages; (v) fines imposed by any governmental agency, and (vi) any other liability as provided by law. Lessee shall defend, indemnify and hold harmless the Lessor, its officials, officers, agents, and employees from any and all such responsibilities, damages, claims, fines, liabilities, including without limitation any costs, expenses and attorney's fees therefor. Lessor shall have a direct right of action against Lessee even if no third party has asserted a claim. Furthermore, Lessor shall have the right to assign said indemnity.

If Lessee has in the past or continues to use, dispose, generate, or store Contaminants on the leased premises, Lessor, or its designated representatives, at Lessor's sole discretion, may at any time during the term of this Lease, enter upon the leased premises and make any inspections, tests or measurements Lessor deems necessary in order to determine if a release of Contaminants has occurred. Lessor shall give Lessee a minimum of twenty-four (24) hours' notice in writing prior to conducting any inspections or tests, unless, in Lessor's sole judgment, circumstances require otherwise, and such tests shall be conducted in a manner so as to attempt to minimize any inconvenience and disruption to Lessee's operations. If such tests indicate a release of Contaminants, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense, and at any time during the term of this Lease, to have tests for such Contaminants conducted by a qualified party or parties on the leased premises. If Lessor has reason to believe that any Contaminants that originated from a release on the leased premises have contaminated any area outside the leased premises, including but not limited to surface and groundwater, then Lessor, at Lessor's sole discretion, may require Lessee, at Lessee's sole expense, and at any time during the term of this Lease, to have tests for such Contaminants conducted by a qualified party or parties on said area outside the leased premises.

The tests conducted by Lessee's qualified party shall include, but not be limited to, applicable comprehensive soil, emission, or groundwater sampling test or other procedures to determine any actual or possible contamination. Lessee shall expeditiously, but no longer than thirty (30) days after Lessor's request for such release. Lessee will be responsible for all fees and costs related to the unauthorized release of Contaminants including but not limited to investigative, surface and groundwater cleanup,

and expert and agency fees. Lessee shall maintain evidence of financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by a release from the underground tank system. Lessee further agrees to be responsible for maintenance and repair of the storage tanks, obtaining tank permits, filing a business plan with HMMD or other responsible agency and for paying underground storage tank fees, permit fees, and other regulatory agency fees relating to underground storage tanks.

Lessee agrees to keep complete and accurate records on the leased premises for a period of not less than thirty-six (36) months from the applicable events, including, but not limited to permit applications, monitoring, testing, equipment installation, repairing and closure of the underground storage tanks, and any unauthorized releases of Contaminants and make such records available for Lessor or responsible agency inspection. Lessee further agrees to include a copy of Health and Safety Code, Chapter 6.7, Section 25299, as part of any agreement between Lessee and any Operator of such underground storage tanks.

Furthermore, Lessee shall be responsible for compliance with all other laws and regulations presently existing or hereinafter enacted applicable to underground storage tanks, including without limitation any such laws and regulations which alter any of the above requirements.

